

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re REFCO INC. SECURITIES LITIGATION  
-----X

Case No. 07-MD-1902 (JSR)

This Document Relates to:

-----X  
KENNETH M. KRYIS, et al.,

Plaintiffs,

-against-

CHRISTOPHER SUGRUE, et al.,

Defendants.

Case No. 08-CV-3065 (JSR)

Case No. 08-CV-3086 (JSR)

-----X  
KENNETH M. KRYIS, et al.,

Plaintiffs,

-against-

DEUTSCHE BANK SECURITIES INC., et al.,

Defendants.

Case No. 10-CV-3594 (JSR)

-----X  
**DECLARATION OF KENNETH KRYIS**

I, Kenneth Kryis, under penalties of perjury, solemnly state:

1. I make this Declaration on personal knowledge and information.
2. I am one of the Joint Official Liquidators ("JOLs") of the SPhinX Companies and one of the plaintiffs in the above-captioned litigation.
3. I write this Declaration in support of the Kryis Plaintiffs' Memorandum of Law being filed contemporaneously in Opposition to the Moving Defendants' Motion for Summary Judgment filed by defendants on August 2, 2012.

**SPhinX Managed Futures Fund SPC ("SMFF") transactions at Refco Capital Markets Ltd ("RCM") following the August 2004 Refco Leveraged Buy Out transaction ("LBO")**

4. In my report on cash balances and transfers in respect of the SPhinX Group of Companies, filed on June 29, 2012 ("the Cash Report"), we reviewed the daily total account balances for SMFF's accounts at RCM and confirmed the balances to be \$541,577,862 at August 4, 2004 and \$312,233,311 at October 10, 2005 as shown in the table below. The daily total account balances for SMFF's accounts at RCM are exhibited at Appendix 6 of the Cash Report.
5. SMFF maintained a number of accounts in the name of its segregated portfolios at RCM. There was no trading effected through these accounts – just cash deposits, withdrawals and interest. We have reviewed cash reports regarding cash balances and transfers into and out of SMFF's cash accounts at RCM.
6. Under a FIFO, or "first in, first out," analysis, I assume that cash withdrawn from SMFF's accounts at RCM after the August 2004 Refco LBO would comprise cash deposited at RCM before the LBO because that would be the first cash in. SMFF's total withdrawals of cash from RCM after the LBO did not reach \$541 million until September 29, 2005, when there was a gross withdrawal of \$96.9 million. Prior to September 29, 2005, SMFF withdrew approximately \$536.6 million on aggregate.
7. A table showing the balance, gross deposits, interest, and withdrawals between August 4, 2004 and October 10, 2005 is shown below:

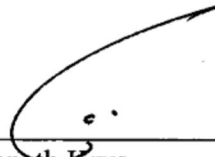
<u>Description</u>	<u>Amount</u>
BALANCE on August 4, 2004	<b>541,577,862</b>
GROSS DEPOSITS after August 4, 2005	399,993,000
INTEREST after August 4, 2005	13,867,447
GROSS WITHDRAWALS after August 4, 2005	(643,205,000)
BALANCE on October 10, 2005	<b>312,233,311</b>

8. The JOLs previously conducted investigations into redemptions made around the time of the Refco Fraud in October 2005.
9. We considered redemptions in respect of the post June 2005 period and, in particular, approximately \$200 million of redemptions made by Refco Offshore Managed Futures Fund Ltd ("Refco Offshore") (formerly known as Refco SPhinX Managed Futures Index Fund Ltd) indirectly from SMFF through SPhinX Managed Futures, Ltd. ("SMFL").
10. The JOLs requested copies of all redemption correspondence between Investors and Refco Offshore; between the Investment Manager and Refco Offshore; and also with the SPhinX Funds/PlusFunds from the Refco Offshore Liquidator.
11. The JOLs also conducted additional research using documents collected in connection with discovery which indicated that the approximate \$200 million in redemptions made by Refco Offshore were largely made in respect of a single investor, Permal.
12. Investor records of Refco Offshore indicate that Permal was the largest investor in Refco Offshore, having a pre-LBO investment balance of \$221,318,417 on July 30,

2004. The investor records also show that Permal made post-LBO redemptions through Refco Offshore in stages with approximately \$65 million redeemed in June 2005 and another \$133 million redeemed in August 2005. We also noted that SMFL's cash records showed at least \$199 million in redemption payments were made to Refco Offshore during a similar time period between June 1, 2005 and September 30, 2005. In our review of claims in the SPhinX estate it is not unusual for actual payments to slightly lag the record date for redemptions. Similarly we noted the balance of cash held with RCM by SMFF decreased by a large amount (approximately \$270 million) between June 1, 2005 and September 30, 2005.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 23, 2012



Kenneth Krys